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**CHICAGO DISTRICT CORPS OF ENGINEERS
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FACT SHEET

NATIONWIDE PERMITS WITHIN THE CHICAGO DISTRICT

MARCH 2002

On January 15, 2002, the U.S. Army Corps of Engineers (Corps) published notification in the Federal Register announcing the re-issuance all the existing Nationwide Permits (NWP), General Conditions, and definitions with some modifications, and one new General Condition. These comprise the Corps Nationwide Permit Program. The Nationwide Permit Program is implemented under Section 10 of the River and Harbors Act of 1899 and Section 404 of the Clean Water Act.

The Nationwide Permit Program is an integral part of the Corps Regulatory Program and is designed to provide effective protection for wetlands and other aquatic resources while being administratively efficient. The NWP includes specific project limitations and are conditioned to ensure that adverse environmental effects are no more than minimal and that the aquatic environment is protected. If a permit applicant designs a project such that the limitations and conditions of the NWP are met, the Corps can provide a simplified and expedited review and project authorization. We encourage permit applicants to consider the advantages of designing projects that meet the criteria for a NWP authorization.

For ease in understanding, the Chicago District (District) has combined all applicable NWPs for use within its jurisdictional boundaries in this document. In addition, we have provided a table (attached) summarizing the status, conditions, notification, delineation and Section 401 Water Quality Certification requirements for each NWP.

Revocation of Select Nationwide Permits within the Chicago District

On January 5, 2001, the U.S Army Corps of Engineers' Great Lakes and Ohio River Division Commander permanently revoked the following Nationwide Permits from use within Chicago District boundaries:

- | | |
|---------------------------------------|--|
| 1. Aids to Navigation | 25. Structural Discharges |
| 3. Maintenance | 26. Reserved |
| 7. Outfall Structures and Maintenance | 27. Stream and Wetland Restoration Activities |
| 10. Mooring Buoys | 29. Single Family Housing |
| 11. Temporary Recreational Structures | 31. Maintenance of Existing Flood Control Facilities |
| 12. Utility Line Activities | 32. Completed Enforcement Actions |
| 13. Bank Stabilization | 33. Temporary Construction Access and Dewatering |
| 14. Linear Transportation Projects | 36. Boat Ramps |
| 18. Minor Discharges | 38. Cleanup of Hazardous and Toxic Waste |
| 19. Minor Dredging | 39. Residential, Commercial and Institutional Developments |
| 20. Oil Spill Cleanup | 41. Reshaping Existing Drainage Ditches |
| 22. Removal of Vessels | 42. Recreational Facilities |

The NWPs as described in the following discussion will remain in effect unless they are modified, suspended, or revoked.

Expiration Date

As noted in the January 15, 2002 Federal register notice, all issued, reissued and modified NWPs, and General Conditions will expire five years from their effective date, or March 18, 2007.

Permit Conditions

Each of the NWPs has its own parameters that describe what activities are authorized by that NWP. As a part of the NWP program,

there are twenty-seven (27) General Conditions that apply to all NWP. Potential permittees should also be aware that the issuance of a NWP by the Corps of Engineers does not eliminate the need to obtain all other required Federal, state and local authorizations.

Notification Requirements

It is important to note that General Condition 13 requires the submittal of various types of information for Pre-Construction Notifications (PCNs) to this and other agencies for all activities to be authorized under the Nationwide Permit Program. In addition, it should be noted that General Condition 14 requires that permittees submit a Compliance Certification upon completion of the authorized activity and any required mitigation.

If you are applying for a permit, it may also be beneficial to obtain a copy of the latest Application Checklist provided by this office. Providing the information requested in this document would expedite the project manager's determination of whether or not your project would indeed have minimal impact and therefore qualify for a NWP. This office can also provide you with information describing our Mitigation Guidelines and Requirements, for projects requiring wetland mitigation, as a part of a comprehensive PCN submittal. The aforementioned documents are available on the Chicago District Regulatory website at <http://www.lrc.usace.army.mil/co-r>

Discretionary Authority

It should be noted that the Corps has the discretionary authority to modify, suspend, or revoke NWP authorization. This office reserves the right to evaluate proposed activities for compliance with the NWPs. If it is found that a proposed activity would have more than minimal individual or cumulative adverse effects on the environment, or otherwise may be contrary to the public interest, this office may modify or condition the NWP authorization or require authorization under an Individual Permit. Individual permitting procedures require the issuance of a Public Notice and a more detailed review. (See 33 CFR Part 330.4 (e).)

Section 401 Water Quality Certification

Activities that involve the discharge of dredged or fill material into waters of the United States are regulated by Section 404 of the Clean Water Act. The Corps of Engineers may not authorize activities under Section 404 unless and until the state where the discharge is to take place certifies that the discharge complies with the water quality standards of that state (Section 401 of the Clean Water Act).

The Illinois Environmental Protection Agency (IEPA) has issued Section 401 certification for several of the NWPs and has denied it for others. An activity that qualifies for a NWP but was denied automatic Section 401 certification must obtain individual water quality certification or a waiver from the state before the activity is fully authorized. Water quality certification requirements for each NWP are summarized in the table provided at the end of this document. For more information on state requirements regarding water quality certification, please contact the IEPA at the following address:

**Illinois Environmental Protection Agency
Division of Water Pollution Control, Permit Section
Box 19276
1021 North Grand Avenue East
Springfield, Illinois 62794-9276
(217) 782-0610**

ACTIVE NATIONWIDE PERMITS WITHIN THE CHICAGO DISTRICT:

2. Structures in Artificial Canals. Structures constructed in artificial canals within principally residential developments where the connection of the canal to a navigable water of the United States has been previously authorized. (See 33 CFR 322.5(g)). (Section 10)

Expiration: March 18, 2007

4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities. Fish and wildlife harvesting devices and activities such as pound nets, crab traps, crab dredging, eel pots, lobster traps, duck blinds, clam and oyster digging; and small fish attraction devices such as open water fish concentrators (sea kites, etc). This nationwide permit authorizes shellfish seeding provided this activity does not occur in wetlands or sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist, but may not be present in a given year). This nationwide permit does not authorize artificial reefs or impoundments and semi-impoundments of waters of the United States for the culture or holding of motile species such as lobster or the use of covered oyster trays or clam racks. (Sections 10 and 404) **Expiration: March 18, 2007**

5. Scientific Measurement Devices. Devices, whose purpose is to measure and record scientific data such as staff gages, tide gages, water recording devices, water quality testing and improvement devices and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided the discharge is limited to 25 cubic yards and further for discharges of 10 to 25 cubic yards provided the permittee notifies the District Engineer in accordance with "Notification" general condition. (Sections 10 and 404) **Expiration: March 18, 2007**

6. Survey Activities. Survey activities including core sampling, seismic exploratory operations, and plugging of seismic shot holes and other exploratory-type bore holes, soil survey and sampling and historic resources surveys. Discharges and structures associated with the recovery of historic resources are not authorized by this nationwide permit. Drilling and the discharge of excavated material from test wells for oil and gas exploration is not authorized by this nationwide permit; the plugging of such wells is authorized. Fill placed for roads, pads and other similar activities is not authorized by this nationwide permit. The nationwide permit does not authorize any permanent structures. The discharge of drilling muds and cuttings may require a permit under Section 402 of the Clean Water Act. (Sections 10 and 404) **Expiration: March 18, 2007**

8. Oil and Gas Structures. Structures for the exploration, production, and transportation of oil, gas, and minerals on the outer continental shelf within areas leased for such purposes by the Department of the Interior, Minerals Management Service. Such structures shall not be placed within the limits of any designated shipping safety fairway or traffic separation scheme, except temporary anchors that comply with the fairway regulations in 33 CFR 322.5(l). (Where such limits have not been designated, or where changes are anticipated, District Engineers will consider asserting discretionary authority in accordance with 33 CFR 330.4(e) and will also review such proposals to ensure they comply with the provisions of the fairway regulations in 33 CFR 322.5(l)). Any Corps review under this permit will be limited to the effects on navigation and national security in accordance with 33 CFR 322.5 (f). Such structures will not be placed in established danger zones or restricted areas as designated in 33 CFR Part 334: nor will such structures be permitted in EPA or Corps designated dredged material disposal areas. (Section 10) **Expiration: March 18, 2007**

9. Structures in Fleeting and Anchorage Areas. Structures, buoys, floats, and other devices placed within anchorage or fleeting areas to facilitate moorage of vessels where such areas have been established for that purpose by the U.S. Coast Guard. (Section 10) **Expiration: March 18, 2007**

15. U.S. Coast Guard Approved Bridges. Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the United States, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills provided such discharges have been authorized by the U.S. Coast Guard as part of the bridge permit. Causeways and approach fills are not included in this nationwide permit and will require an individual or regional Section 404 permit. (Section 404) **Expiration: March 18, 2007**

16. Return Water From Upland Contained Disposal Areas. Return water from an upland, contained dredged material disposal area. The dredging itself may require a Section 404 permit (33 CFR 323.2 (d)) but will require a Section 10 permit if located in navigable waters of the United States. The return water from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(d) even though the disposal itself occurs on the upland and thus does not require a Section 404 permit. This nationwide permit satisfies the technical requirement for a Section 404 permit for the return water where the quality of the return water is controlled by the state through the Section 401 certification procedures. (Section 404) **Expiration: March 18, 2007**

17. Hydropower Projects. Discharges of dredged or fill material associated with (a) small hydropower projects at existing reservoirs where the project, which includes the fill, is licensed by the Energy Regulatory Commission (FERC) under the Power Act of 1920, as amended; and has a total generating capacity of not more than 5000 KW; and the permittee notifies the District Engineer in accordance with the "Notification" general condition; or (b) hydropower projects for which the FERC has granted an exemption from licensing pursuant to Section 408 of the Energy Security Act of 1980 (16 U.S.C 2705 and 2708) and Section 30 of the Power Act, as amended; provided the permittee notifies the District Engineer in accordance with the "Notification" general condition. (Section 404) **Expiration: March 18, 2007**

21. Surface Coal Mining Activities. Discharges of dredged or fill material into waters of the US associated with surface coal mining and reclamation operations provided the coal mining activities are authorized by the Department of the Interior, Office of Surface Mining (OSM), or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977 and provided the permittee notifies the District Engineer in accordance with the "Notification" General Condition. In addition, to be authorized by this NWP, the District Engineer must determine that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are minimal both individually and cumulatively and must notify the project sponsor of this determination in writing. The Corps, at the discretion of the District Engineer, may require a bond to ensure success of the mitigation, if no other Federal or state agency has required

one. For discharges in special aquatic sites, including wetlands, and stream riffle and pool complexes, the *notification* must also include a delineation of affected special aquatic sites, including wetlands. (also, see 33 CFR 330.1(e))

Mitigation: In determining the need for as well as the level and type of mitigation, the District Engineer will ensure no more than minimal adverse effects to the aquatic environment occur. As such, District Engineers will determine on a case-by-case basis the requirement for adequate mitigation to ensure the effects to aquatic systems are minimal. In cases where OSM or the state has required mitigation for the loss of aquatic habitat, the Corps may consider this in determining appropriate mitigation under Section 404. (Sections 10 and 404)

Expiration: March 18, 2007

23. Approved Categorical Exclusions. Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another agency or department where that agency or department has determined, pursuant to the Council on Environmental Quality Regulation for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR Part 1500 et seq.), that the activity, work, or discharge is categorically excluded from environmental documentation because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment, and the Office of the Chief of Engineers (ATTN: CECW-OR) has been furnished notice of the agency's or department's application for the categorical exclusion and concurs with that determination. Prior to approval for purposes of this nationwide permit of any agency's categorical exclusions, the Chief of Engineers will solicit public comment. In addressing these comments, the Chief of Engineers may require certain conditions for authorization of an agency's categorical exclusions under this nationwide permit. (Sections 10 and 404) **Expiration: March 18, 2007**

24. State Administered Section 404 Program. Any activity permitted by a state administering its own Section 404 permit program pursuant to 33 U.S.C. 1344(g)(l) is permitted pursuant to Section 10 of the Rivers and Harbors Act of 1899. Those activities which do not involve a Section 404 state permit are not included in this nationwide permit, but certain structures will be exempted by Sec. 154 of PL 94-587, 90 Stat. 2917 (33 U.S.C. 59l). (See 33 CFR 322.3(a)(2)). (Section 10) **Expiration: March 18, 2007**

28. Modifications of Existing Marinas. Reconfigurations of existing docking facilities within an authorized marina area. No dredging, additional slips or dock spaces, or expansion of any kind within waters of the United States are authorized by this nationwide permit. (Section 10) **Expiration: March 18, 2007**

30. Moist Soil Management for Wildlife. Discharges of dredged or fill material and maintenance activities that are associated with moist soil management for wildlife performed on non-tidal Federally-owned or managed, state-owned or managed property, and local government agency-owned or managed property, for the purpose of continuing ongoing, site-specific, wildlife management activities where soil manipulation is used to manage habitat and feeding areas for wildlife. Such activities include, but are not limited to: The repair, maintenance or replacement of existing water control structures; the repair or maintenance of dikes; and plowing or disking to impede succession, prepare seed beds, or establish fire breaks. Sufficient vegetated buffers must be maintained adjacent to all open water bodies, streams, etc., to preclude water quality degradation due to erosion and sedimentation. This NWP does not authorize the construction of new dikes, roads, water control structures, etc. associated with the management areas. This NWP does not authorize converting wetlands to uplands, impoundments or other open water bodies. (Section 404) **Expiration: March 18, 2007**

34. Cranberry Production Activities. Discharges of dredged or fill material for dikes, berms, pumps, water control structures or leveling of cranberry beds associated with expansion, enhancement, or modification activities at existing cranberry production operations provided that the activity meets all of the following criteria:

- a. The cumulative total acreage of disturbance per cranberry production operation, including but not limited to, filling, flooding, ditching, or clearing, does not exceed ten (10) acres of waters of the United States, including wetlands;
- b. The permittee notifies the District Engineer in accordance with the "Notification" general condition. The notification must include a delineation of affected special aquatic sites, including wetlands; and
- c. The activity does not result in a net loss of wetland acreage.

This nationwide permit does not authorize any discharge of dredged or fill material related to other cranberry production activities such as warehouses, processing facilities, or parking areas. For the purposes of this nationwide permit, the cumulative total of 10 acres will be measured over the period that this nationwide permit is valid. (Section 404) **Expiration: March 18, 2007**

35. Maintenance Dredging of Existing Basins. Excavation and removal of accumulated sediment for maintenance of existing marina basins, access channels to marina basins, or boat slips, and boat slips to previously authorized depths or controlling depths for ingress/egress whichever is less, provided the dredged material is disposed of at an upland site and proper siltation controls are used. (Section 10) **Expiration: March 18, 2007**

37. Emergency Watershed Protection and Rehabilitation. Work done by or funded by:

- a. The Natural Resources Conservation Service which is a situation requiring immediate action under its emergency Watershed Protection Program (7 CFR part 624); or
- b. The United States Forest Service under its Burned-Area Emergency Rehabilitation Handbook (FSH 509.13); or
- c. The Department of the Interior for wildland fire management burned area emergency stabilization and rehabilitation (DOI Manual Part 620, Ch. 3).

For all of the above provisions, the District Engineer must be notified in accordance with the General Condition 13. (Also, see 33 CFR 330.1(e)). (Sections 10 and 404) **Expiration: March 18, 2007**

40. Agricultural Activities. Discharges of dredged or fill material into non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, for improving agricultural production and the construction of building pads for farm buildings. Authorized activities include the installation, placement, or construction of drainage tiles, ditches, or levees; mechanized land clearing; land leveling; the relocation of existing serviceable drainage ditches constructed in waters of the US; and similar activities, provided the permittee complies with the following terms and conditions:

a. For discharges into non-tidal wetlands to improve agricultural production, the following criteria must be met if the permittee is an United States Department of Agriculture (USDA) Program participant:

(1) The permittee must obtain a categorical minimal effects exemption, minimal effect exemption, or mitigation exemption from NRCS in accordance with the provisions of the Food Security Act of 1985, as amended (16 U.S.C. 3801 et seq.);

(2) The discharge into non-tidal wetlands does not result in the loss of greater than ½-acre of non-tidal wetlands on a farm tract;

(3) The permittee must have NRCS-certified wetland delineation;

(4) The permittee must implement an NRCS-approved compensatory mitigation plan that fully offsets wetland losses, if required; and

(5) The permittee must submit a report, within 30 days of completion of the authorized work, to the District Engineer that contains the following information: (a) The name, address, and telephone number of the permittee; (b) The location of the work; (c) A description of the work; (d) The type and acreage (or square feet) of the loss of wetlands.2 (e.g., 1/3-acre of emergent wetlands); and (e) The type, acreage (or square feet), and location of compensatory mitigation (e.g. 1/3-acre of emergent wetland on a farm tract; credits purchased from a mitigation bank); or

b. For discharges into non-tidal wetlands to improve agricultural production, the following criteria must be met if the permittee is not a USDA Program participant (or a USDA Program participant for which the proposed work does not qualify for authorization under paragraph (a) of this NWP):

(1) The discharge into non-tidal wetlands does not result in the loss of greater than ½-acre of non-tidal wetlands on a farm tract;

(2) The permittee must notify the District Engineer in accordance with General Condition 13, if the discharge results in the loss of greater than 1/10-acre of non-tidal wetlands;

(3) The *notification* must include a delineation of affected wetlands; and

(4) The *notification* must include a compensatory mitigation proposal to offset losses of waters of the US; or

c. For the construction of building pads for farm buildings, the discharge does not cause the loss of greater than ½-acre of non-tidal wetlands that were in agricultural production prior to December 23, 1985, (i.e., farmed wetlands) and the permittee must notify the District Engineer in accordance with General Condition 13; and

d. Any activity in other waters of the US is limited to the relocation of existing serviceable drainage ditches constructed in non-tidal streams. This NWP does not authorize the relocation of greater than 300 linear-feet of existing serviceable drainage ditches constructed in non-tidal streams unless, for drainage ditches constructed in intermittent non-tidal streams, the District Engineer waives this criterion in writing, and the District Engineer has determined that the project complies with all terms and conditions of this NWP, and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively. For impacts exceeding 300-linear feet of impacts to existing serviceable ditches constructed in intermittent non-tidal streams, the permittee must notify the District Engineer in accordance with the “*Notification*” General Condition 13; and

e. The term “farm tract” refers to a parcel of land identified by the Farm Service Agency. The Corps will identify other waters of the US on the farm tract. NRCS will determine if a proposed agricultural activity meets the terms and conditions of paragraph a. of this NWP, except as provided below. For those activities that require *notification*, the District Engineer will determine if a proposed agricultural activity is authorized by paragraphs b., c., and/or d. of this NWP. USDA Program participants requesting authorization for discharges of dredged or fill material into waters of the US authorized by paragraphs (c) or (d) of this NWP, in addition to paragraph (a), must notify the District Engineer in accordance with General Condition 13 and the District Engineer will determine if the entire single and complete project is authorized by this NWP. Discharges of dredged or fill material into waters of the US associated with completing required compensatory mitigation are authorized by this NWP. However, total impacts, including other authorized impacts under this NWP, may not exceed the ½-acre limit of this NWP. This NWP does not affect, or otherwise regulate, discharges associated with agricultural activities when the discharge qualifies for an exemption under Section 404(f) of the CWA, even though a categorical minimal effects exemption, minimal effect exemption, or mitigation exemption from NRCS pursuant to the Food Security Act of 1985, as amended, may be required. Activities authorized by paragraphs a. through d. may not exceed a total of ½-acre on a single farm tract. If the site was used for agricultural purposes and the farm owner/ operator used either paragraphs a., b., or c. of this NWP to authorize activities in waters of the US to increase agricultural production or construct farm buildings, and the current landowner wants to use NWP 39 to authorize residential, commercial, or industrial development activities in waters of the US on the site, the combined acreage loss authorized by NWPs 39 and 40 cannot exceed ½-acre (see General Condition 15). (Section 404) **Expiration: March 18, 2007**

43. Stormwater Management Facilities. Discharges of dredged or fill material into non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, for the construction and maintenance of stormwater management facilities, including activities for the excavation of stormwater ponds/facilities, detention basins, and retention basins; the installation and maintenance of water control structures, outfall structures and emergency spillways; and the maintenance dredging of existing stormwater management ponds/facilities and detention and retention basins, provided the activity meets all of the following criteria:

a. The discharge for the construction of new stormwater management facilities does not cause the loss of greater than ½-acre of non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters;

b. The discharge does not cause the loss of greater than 300 linear-feet of a stream bed, unless for intermittent stream beds this criterion is waived in writing pursuant to a determination by the District Engineer, as specified below, that the project complies with all terms and conditions of this NWP and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;

c. For discharges causing the loss of greater than 300 linear feet of intermittent stream beds, the permittee notifies the District Engineer in accordance with the "Notification" General Condition 13. In such cases, to be authorized the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine the adverse environmental effects are minimal both individually and cumulatively, and waive this limitation in writing before the permittee may proceed;

d. The discharges of dredged or fill material for the construction of new stormwater management facilities in perennial streams is not authorized;

e. For discharges or excavation for the construction of new stormwater management facilities or for the maintenance of existing stormwater management facilities causing the loss of greater than 1/10-acre of non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters, provided the permittee notifies the District Engineer in accordance with the "Notification" General Condition 13. In addition, the *notification* must include:

(1) A maintenance plan. The maintenance plan should be in accordance with state and local requirements, if any such requirements exist;

(2) For discharges in special aquatic sites, including wetlands and submerged aquatic vegetation, the *notification* must include a delineation of affected areas; and

(3) A compensatory mitigation proposal that offsets the loss of waters of the US. Maintenance in constructed areas will not require mitigation provided such maintenance is accomplished in designated maintenance areas and not within compensatory mitigation areas (i.e., District Engineers may designate non-maintenance areas, normally at the downstream end of the stormwater management facility, in existing stormwater management facilities). (No mitigation will be required for activities that are exempt from Section 404 permit requirements);

f. The permittee must avoid and minimize discharges into waters of the US at the project site to the maximum extent practicable, and the *notification* must include a written statement to the District Engineer detailing compliance with this condition (i.e. why the discharge must occur in waters of the US and why additional minimization cannot be achieved);

g. The stormwater management facility must comply with General Condition 21 and be designed using BMPs and watershed protection techniques. Examples may include forebays (deeper areas at the upstream end of the stormwater management facility that would be maintained through excavation), vegetated buffers, and siting considerations to minimize adverse effects to aquatic resources. Another example of a BMP would be bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources from storm flows, especially downstream of the facility, that provide, to the maximum extent practicable, for long term aquatic resource protection and enhancement;

h. Maintenance excavation will be in accordance with an approved maintenance plan and will not exceed the original contours of the facility as approved and constructed; and

i. The discharge is part of a single and complete project. (Section 404) **Expiration: March 18, 2007**

44. Mining Activities. Discharges of dredged or fill material into:

(i) Isolated waters, streams where the annual average flow is 1 cubic foot per second or less, and non-tidal wetlands adjacent to headwater streams, for aggregate mining (i.e., sand, gravel, and crushed and broken stone) and associated support activities;

(ii) Lower perennial streams, excluding wetlands adjacent to lower perennial streams, for aggregate mining activities (support activities in lower perennial streams or adjacent wetlands are not authorized by this NWP); and/or

(iii) Isolated waters and non-tidal wetlands adjacent to headwater streams, for hard rock/mineral mining activities (i.e., extraction of metalliferous ores from subsurface locations) and associated support activities, provided the discharge meets the following criteria:

(a) The mined area within waters of the United States, plus the acreage loss of waters of the United States resulting from support activities cannot exceed ½ acre;

(b) The permittee must avoid and minimize discharges into waters of the United States at the project site to the maximum extent practicable, and the notification must include a written statement detailing compliance with this condition (i.e., why the discharge must occur in waters of the United States and why additional minimization cannot be achieved);

(c) In addition to General Conditions 17 and 20, activities authorized by this permit must not substantially alter the sediment characteristics of areas or concentrated shellfish beds or fish spawning areas. Normally the mandated water quality management plan should address these impacts;

(d) The permittee must implement necessary measures to prevent increases in stream gradient and water velocities and to prevent adverse effects (e.g. headcutting, bank erosion) to upstream and downstream channel conditions.

(e) Activities authorized by this permit must not result in adverse effects on the course, capacity, or condition of navigable waters of the United States;

(f) The permittee must utilize measures to minimize downstream turbidity;

(g) Wetland impact must be compensated through mitigation approved by the Corps;

(h) Beneficiation and mineral processing for hard rock/mineral mining activities may not occur within 200 feet of the ordinary high water mark of any open waterbody. Although the Corps does not regulate discharges from these activities, a Clean Water Act Section 402 permit may be required;

(i) All activities authorized by this NWP must comply with General Conditions 9 & 21. Further, the District Engineer may require modifications to the required water quality management plan to ensure that the authorized work results in minimal adverse effects to water quality;

(j) Except for aggregate mining activities in lower perennial streams, no aggregate mining can occur within stream beds where the average annual flow is greater than 1 cubic foot per second or in waters of the United States within 100 feet of the ordinary high water mark of headwater stream segments where the average annual flow of the stream is greater than 1 cubic foot per second (aggregate mining can occur in areas immediately adjacent to the ordinary high water mark of a stream where the average annual flow is 1 cubic foot per second or less);

(k) Single and complete project: The discharge must be for a single and complete project, including support activities. Discharges of dredged or fill material into waters of the United States for multiple mining activities on several designated parcels of a single and complete mining operation can be authorized by this NWP provided the 1/2 acre limit is not exceeded; and

(l) *Notification*: The permittee must notify the District Engineer in accordance with General Condition 13. The *notification* must include: (1) A description of waters of the United States adversely affected by the project; (2) A written statement to the District Engineer detailing compliance with paragraph (b), above (i.e., why the discharge must occur in waters of the United States and why additional minimization cannot be achieved); (3) a description of measures taken to ensure that the proposed work complies with paragraphs (c) through (f) above; and (4) A reclamation plan (for aggregate mining in isolated waters and non-tidal wetlands adjacent to headwaters and hard rock/mineral mining only).

This NWP does not authorize hard rock/mineral mining, including placer mining, in streams. No hard rock/mineral mining can occur in waters of the United States within 100 feet of the ordinary high water mark of headwater streams. The terms "headwaters" and "isolated waters" are defined at 33 CFR 330.2 (d) and (e), respectively. For the purposes of this NWP, the term "lower perennial stream" is defined as follows: "A stream in which the gradient is low and water velocity is slow, there is no tidal influence, some water flows throughout the year, and the substrate consists mainly of sand and mud." (Sections 10 and 404) **Expiration: March 18, 2007**

NATIONWIDE PERMIT CONDITIONS:

GENERAL CONDITIONS: The following general conditions must be followed in order for any authorization by a nationwide permit to be valid:

1. Navigation. No activity may cause more than a minimal adverse effect on navigation.

2. Proper Maintenance. Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.

3. Erosion and Siltation Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

4. Aquatic Life Movements. No activity may substantially disrupt the necessary life-cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.

5. Equipment. Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.

6. Regional and Case-by-Case Conditions. The activity must comply with any regional conditions which may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state or tribe in its Section 401 water quality certification.

7. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status; unless the appropriate Federal agency, with direct management responsibility for such river has determined in writing that the proposed activity will not adversely effect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service.)

8. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

9. Water Quality Certification. (a) In certain states and tribal lands an individual 401 Water Quality Certification must be obtained or waived (See 33 CFR 330.4(c)).

(b) For NWPs 12, 14, 17, 18, 32, 39, 40, 42, 43, and 44, where the state or tribal 401 certification (either generically or individually) does not require or approve water quality management measures, the permittee must provide water quality management measures that will ensure that the authorized work does not result in more than minimal degradation of water quality (or the Corps determines that compliance with state or local standards, where applicable, will ensure no more than minimal adverse effect on water quality). An important component of water quality management includes stormwater management that minimizes degradation of the downstream aquatic system, including water quality (refer to General Condition 21 for stormwater management requirements). Another important component of water quality management is the establishment and maintenance of vegetated buffers next to open waters, including streams (refer to

General Condition 19 for vegetated buffer requirements for the NWP). This condition is only applicable to projects that have the potential to affect water quality. While appropriate measures must be taken, in most cases it is not necessary to conduct detailed studies to identify such measures or to require monitoring. **NOTE: NWPs 12, 14, 39, and 42 have been revoked by the Chicago District.**

10. Coastal Zone Management. In certain states, an individual state coastal zone management consistency concurrence must be obtained or waived. (See 33 CFR 330.4(d)).

11. Endangered Species. (a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the District Engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or is located in the designated critical habitat and shall not begin work on the activity until notified by the District Engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that may affect Federally-listed endangered or threatened species or designated critical habitat, the notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. As a result of formal or informal consultation with the FWS or NMFS the District Engineer may add species-specific regional endangered species conditions to the NWPs.

(b) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the USFWS or the NMFS, both lethal and non-lethal "takes" of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the USFWS and NMFS or their World Wide Web pages at <http://www.fws.gov/r9endspp/endspp.html> and http://www.nmfs.noaa.gov/prot_res/overview/es.html respectively.

12. Historic Properties. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the District Engineer has complied with the provisions of 33 CFR 325, Appendix C. The prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office (SHPO) and the National Register of Historic Places. (See 33 CFR 330.4(g)). For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the notification must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

13. Notification.

(a) Timing; where required by the terms of the NWP, the prospective permittee must notify the District Engineer with a preconstruction notification (PCN) as early as possible. The District Engineer must determine if the notification is complete within 30 days of the date of receipt and can request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the District Engineer will notify the prospective permittee that the notification is still incomplete and the PCN review process will not commence until all of the requested information has been received by the District Engineer. The prospective permittee shall not begin the activity:

(1) Until notified in writing by the District Engineer that the activity may proceed under the NWP with any special conditions imposed by the District or Division Engineer; or

(2) If notified in writing by the District or Division Engineer that an Individual Permit is required; or

(3) Unless 45 days have passed from the District Engineer's receipt of the complete notification and the prospective permittee has not received written notice from the District or Division Engineer. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Notification: The notification must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) Brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), Regional General Permit(s), or Individual Permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP (Sketches usually clarify the project and when provided result in a quicker decision.);

(4) For NWPs 7, 12, 14, 18, 21, 34, 38, 39, 41, 42, and 43, the PCN must also include a delineation of affected special aquatic sites, including wetlands, vegetated shallows (e.g., submerged aquatic vegetation, seagrass beds), and riffle and pool complexes (see paragraph 13(f)); **NOTE: NWPs 7, 12, 14, 18, 38, 39, 41 and 42 have been revoked by the Chicago District.**

(5) For NWP 7 (Outfall Structures and Maintenance), has been revoked by the Chicago District.

(6) For NWP 14 (Linear Transportation Crossings), has been revoked by the Chicago District.

(7) For NWP 21 (Surface Coal Mining Activities), the PCN must include an Office of Surface Mining (OSM) or state-approved mitigation plan, if applicable. To be authorized by this NWP, the District Engineer must determine that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are minimal both individually and cumulatively and must notify the project sponsor of this determination in writing;

(8) For NWP 27 (Stream and Wetland Restoration), has been revoked by the Chicago District.

(9) For NWP 29 (Single-Family Housing), has been revoked by the Chicago District.

- (10) For NWP 31 (Maintenance of Existing Flood Control Projects), has been revoked by the Chicago District.
- (11) For NWP 33 (Temporary Construction, Access, and Dewatering), has been revoked by the Chicago District.
- (12) For NWPs 39, 43 and 44, the PCN must also include a written statement to the District Engineer explaining how avoidance and minimization for losses of waters of the US were achieved on the project site; **NOTE: NWP 39 has been revoked by the Chicago District.**
- (13) NWP 39 (Residential, Institutional and Commercial Developments) and NWP 42 (Recreational Facilities), have been revoked by the Chicago District.
- (14) For NWP 40 (Agricultural Activities), the PCN must include a compensatory mitigation proposal to offset losses of waters of the US. This NWP does not authorize the relocation of greater than 300 linear- feet of existing serviceable drainage ditches constructed in non-tidal streams unless, for drainage ditches constructed in intermittent non- tidal streams, the District Engineer waives this criterion in writing, and the District Engineer has determined that the project complies with all terms and conditions of this NWP, and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;
- (15) For NWP 43 (Stormwater Management Facilities), the PCN must include, for the construction of new stormwater management facilities, a maintenance plan (in accordance with state and local requirements, if applicable) and a compensatory mitigation proposal to offset losses of waters of the US. For discharges that cause the loss of greater than 300 linear feet of an intermittent stream bed, to be authorized, the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;
- (16) For NWP 44 (Mining Activities), the PCN must include a description of all waters of the US adversely affected by the project, a description of measures taken to minimize adverse effects to waters of the US, a description of measures taken to comply with the criteria of the NWP, and a reclamation plan (for all aggregate mining activities in isolated waters and non-tidal wetlands adjacent to headwaters and any hard rock/mineral mining activities);
- (17) For activities that may adversely affect Federally-listed endangered or threatened species, the PCN must include the name(s) of those endangered or threatened species that may be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work; and
- (18) For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.
- (c) Form of Notification: The standard Individual Permit application form (Form ENG 4345) may be used as the notification but must clearly indicate that it is a PCN and must include all of the information required in (b) (1)-(18) of General Condition 13. A letter containing the requisite information may also be used.
- (d) District Engineer's Decision: In reviewing the PCN for the proposed activity, the District Engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The prospective permittee may submit a proposed mitigation plan with the PCN to expedite the process. The District Engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. If the District Engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the District Engineer will notify the permittee and include any conditions the District Engineer deems necessary. The District Engineer must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee is required to submit a compensatory mitigation proposal with the PCN, the proposal may be either conceptual or detailed. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the District Engineer will expeditiously review the proposed compensatory mitigation plan. The District Engineer must review the plan within 45 days of receiving a complete PCN and determine whether the conceptual or specific proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the District Engineer to be minimal, the District Engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP.
- If the District Engineer determines that the adverse effects of the proposed work are more than minimal, then the District Engineer will notify the applicant either: (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an Individual Permit; (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under the NWP with specific modifications or conditions. Where the District Engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level. When conceptual mitigation is included, or a mitigation plan is required under item (2) above, no work in waters of the US will occur until the District Engineer has approved a specific mitigation plan.
- (e) Agency Coordination: The District Engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.
- For activities requiring notification to the District Engineer that result in the loss of greater than ½ -acre of waters of the US, the District Engineer will provide immediately (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy to the appropriate Federal or state offices (USFWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the District Engineer notice that they intend to provide substantive, site-specific comments. If so contacted by

an agency, the District Engineer will wait an additional 15 calendar days before making a decision on the notification. The District Engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The District Engineer will indicate in the administrative record associated with each notification that the resource agencies' concerns were considered. As required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act, the District Engineer will provide a response to NMFS within 30 days of receipt of any Essential Fish Habitat conservation recommendations. Applicants are encouraged to provide the Corps multiple copies of notifications to expedite agency notification.

(f) Wetland Delineations: Wetland delineations must be prepared in accordance with the current method required by the Corps (For NWP 29 see paragraph (b)(9)(iii) for parcels less than ¼ -acre in size). The permittee may ask the Corps to delineate the special aquatic site. There may be some delay if the Corps does the delineation. Furthermore, the 45-day period will not start until the wetland delineation has been completed and submitted to the Corps, where appropriate.

14. Compliance Certification: Every permittee who has received nationwide permit verification from the Corps will submit a signed certification regarding the completed work and any required mitigation. The certification will be forwarded by the Corps with the authorization letter and will include:

- a. A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions;
- b. A statement that any required mitigation was completed in accordance with the permit conditions;
- c. The signature of the permittee certifying the completion of the work and mitigation.

15. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit.

16. Water Supply Intakes. No activity, including structures and work in navigable waters of the United States or discharges of dredged or fill material, may occur in the proximity of a public water supply intake except where the activity is for repair of the public water supply intake structures or adjacent bank stabilization.

17. Shellfish Beds. No activity, including structures and work in navigable waters of the United States or discharges of dredged or fill material, may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4.

18. Suitable Material. No activity, including structures and work in navigable waters of the United States or discharges of dredged or fill material, may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

19. Mitigation. The District Engineer will consider the factors discussed below when determining the acceptability of appropriate and practicable mitigation necessary to offset adverse effects on the aquatic environment that are more than minimal.

(a) The project must be designed and constructed to avoid and minimize adverse effects to waters of the US to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland impacts requiring a PCN, unless the District Engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. Consistent with National policy, the District Engineer will establish a preference for restoration of wetlands as compensatory mitigation, with preservation used only in exceptional circumstances. **NOTE: The minimum compensatory mitigation ratio in the Chicago District is 1.5: 1.**

(d) Compensatory mitigation (i.e., replacement or substitution of aquatic resources for those impacted) will not be used to increase the acreage losses allowed by the acreage limits of some of the NWPs. For example, ¼ -acre of wetlands cannot be created to change a ¼ -acre loss of wetlands to a ½ -acre loss associated with NWP 39 verification. However, ½ -acre of created wetlands can be used to reduce the impacts of a ½ -acre loss of wetlands to the minimum impact level in order to meet the minimal impact requirement associated with NWPs.

(e) To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purposes. Examples of mitigation that may be appropriate and practicable include, but are not limited to: reducing the size of the project; establishing and maintaining wetland or upland vegetated buffers to protect open waters such as streams; and replacing losses of aquatic resource functions and values by creating, restoring, enhancing, or preserving similar functions and values, preferably in the same watershed.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., easements, deed restrictions) of vegetated buffers to open waters. In many cases, vegetated buffers will be the only compensatory mitigation required. Vegetated buffers should consist of native species. The width of the vegetated buffers required will address documented water quality or aquatic habitat loss concerns. Normally, the vegetated buffer will be 25 to 50 feet wide on each side of the stream, but the District Engineers may require slightly wider vegetated buffers to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the Corps will determine the appropriate compensatory mitigation (e.g., stream buffers or wetlands compensation) based on what is best for the aquatic environment

on a watershed basis. In cases where vegetated buffers are determined to be the most appropriate form of compensatory mitigation, the District Engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland impacts.

(g) Compensatory mitigation proposals submitted with the "notification" may be either conceptual or detailed. If conceptual plans are approved under the verification, then the Corps will condition the verification to require detailed plans be submitted and approved by the Corps prior to construction of the authorized activity in waters of the US.

(h) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases that require compensatory mitigation, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

20. Spawning Areas. Activities, including structures and work in navigable waters of the United States or discharges of dredged or fill material, in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., excavate, fill, or smother downstream by substantial turbidity) of an important spawning area are not authorized.

21. Management of Water Flows. To the maximum extent practicable, the activity must be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity, and flow rates). Furthermore, the activity must not permanently restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters) and the structure or discharge of dredged or fill material must withstand expected high flows. The activity must, to the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions, and provide for not increasing water flows from the project site, relocating water, or redirecting water flow beyond preconstruction conditions. Stream channelizing will be reduced to the minimal amount necessary, and the activity must, to the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the activity is part of a larger system designed to manage water flows. In most cases, it will not be a requirement to conduct detailed studies and monitoring of water flow.

This condition is only applicable to projects that have the potential to affect waterflows. While appropriate measures must be taken, it is not necessary to conduct detailed studies to identify such measures or require monitoring to ensure their effectiveness. Normally, the Corps will defer to state and local authorities regarding management of water flow.

22. Adverse Effects From Impoundments. If the activity, including structures and work in navigable waters of the United States or discharge of dredged or fill material, creates an impoundment of water, adverse effects on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.

23. Waterfowl Breeding Areas. Activities, including structures and work in navigable waters of the United States or discharges of dredged or fill material, into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

24. Removal of Temporary Fills. Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

25. Designated Critical Resource Waters. Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, National Wild and Scenic Rivers, critical habitat for Federally listed threatened and endangered species, coral reefs, State natural heritage sites, and outstanding national resource waters or other waters officially designated by a State as having particular environmental or ecological significance and identified by the District Engineer after notice and opportunity for public comment. The District Engineer may also designate additional critical resource waters after notice and opportunity for comment.

(a) Except as noted below, discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, and 44 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. Discharges of dredged or fill materials into waters of the United States may be authorized by the above NWPs in National Wild and Scenic Rivers if the activity complies with General Condition 7. Further, such discharges may be authorized in designated critical habitat for Federally listed threatened or endangered species if the activity complies with General Condition 11 and the U.S. Fish and Wildlife Service or the National Marine Fisheries Service has concurred in a determination of compliance with this condition.

NOTE: NWPs 7, 12, 14, 29, 31, 39 and 42 have been revoked in the Chicago District.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with General Condition 13, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The District Engineer may authorize activities under these NWPs only after he determines that the impacts to the critical resource waters will be no more than minimal. **NOTE: NWPs 3, 10, 13, 18, 19, 22, 25, 27, 33, 36 and 38 have been revoked in the Chicago District.**

26. Fills Within 100-Year Floodplains. For purposes of this General Condition, 100-year floodplains will be identified through the existing Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or FEMA-approved local floodplain maps.

(a) Discharges in Floodplain; Below Headwaters. Discharges of dredged or fill material into waters of the US within the mapped 100-year floodplain, below headwaters (i.e. five cfs), resulting in permanent above-grade fills, are not authorized by NWPs 39, 40, 42, 43, and 44. **NOTE: NWPs 39 and 42 have been revoked in the Chicago District.**

(b) Discharges in Floodway; Above Headwaters. Discharges of dredged or fill material into waters of the US within the FEMA or locally mapped floodway, resulting in permanent above-grade fills, are not authorized by NWPs 39, 40, 42, and 44. **NOTE: NWPs 39 and 42 have been revoked in the Chicago District.**

(c) The permittee must comply with any applicable FEMA-approved state or local floodplain management requirements.

27. Construction Period. For activities that have not been verified by the Corps and the project was commenced or under contract to commence by the expiration date of the NWP (or modification or revocation date), the work must be completed within 12-months after such date (including any modification that affects the project).

For activities that have been verified and the project was commenced or under contract to commence within the verification period, the work must be completed by the date determined by the Corps.

For projects that have been verified by the Corps, an extension of a Corps approved completion date maybe requested. This request must be submitted at least one month before the previously approved completion date.

D. Further Information:

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other Federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project.

E. Definitions:

Best Management Practices (BMPs): BMPs are policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural. A BMP policy may affect the limits on a development.

Compensatory Mitigation: For purposes of Section 10/404, compensatory mitigation is the restoration, creation, enhancement, or in exceptional circumstances, preservation of wetlands and/or other aquatic resources for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Creation: The establishment of a wetland or other aquatic resource where one did not formerly exist.

Enhancement Activities: conducted in existing wetlands or other aquatic resources that increase one or more aquatic functions.

Ephemeral Stream: An ephemeral stream has flowing water only during and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Farm Tract: A unit of contiguous land under one ownership that is operated as a farm or part of a farm.

Flood Fringe: That portion of the 100-year floodplain outside of the floodway (often referred to as "floodway fringe").

Floodway: The area regulated by Federal, state, or local requirements to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated amount (not to exceed one foot as set by the National Flood Insurance Program) within the 100-year floodplain.

Independent Utility: A test to determine what constitutes a single and complete project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Intermittent Stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

Loss of Waters of the US: Waters of the US that include the filled area and other waters that are permanently adversely affected by flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent above-grade, at-grade, or below-grade fills that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the US is the threshold measurement of the impact to existing waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and values. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the US temporarily filled, flooded, excavated, or drained, but restored to preconstruction contours and elevations after construction, are not included in the measurement of loss of waters of the US. Impacts to ephemeral waters are only not included in the acreage or linear foot measurements of loss of waters of the US or loss of stream bed, for the purpose of determining compliance with the threshold limits of the NWPs.

Non-tidal Wetland: A non-tidal wetland is a wetland (i.e., a water of the US) that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open Water: An area that, during a year with normal patterns of precipitation, has standing or flowing water for sufficient duration to establish an ordinary high water mark. Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. The term "open water" includes rivers, streams, lakes, and ponds. For the purposes of the NWPs, this term does not include ephemeral waters.

Perennial Stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

Permanent Above-grade Fill: A discharge of dredged or fill material into waters of the US, including wetlands, that results in a substantial increase in ground elevation and permanently converts part or all of the waterbody to dry land. Structural fills authorized by NWPs 3, 25, 36, etc. are not included.

Preservation: The protection of ecologically important wetlands or other aquatic resources in perpetuity through the implementation of

appropriate legal and physical mechanisms. Preservation may include protection of upland areas adjacent to wetlands as necessary to ensure protection and/or enhancement of the overall aquatic ecosystem.

Restoration: Re-establishment of wetland and/or other aquatic resource characteristics and function(s) at a site where they have ceased to exist, or exist in a substantially degraded state.

Riffle and Pool Complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Single and Complete Project: The term "single and complete project" is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers (see definition of independent utility). For linear projects, the "single and complete project" (i.e., a single and complete crossing) will apply to each crossing of a separate water of the US (i.e., a single waterbody) at that location. An exception is for linear projects crossing a single waterbody several times at separate and distant locations: each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies.

Stormwater Management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater Management Facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and BMPs, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream Bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream Channelization: The manipulation of a stream channel to increase the rate of water flow through the stream channel. Manipulation may include deepening, widening, straightening, armoring, or other activities that change the stream cross-section or other aspects of stream channel geometry to increase the rate of water flow through the stream channel. A channelized stream remains a water of the US, despite the modifications to increase the rate of water flow.

Tidal Wetland: A tidal wetland is a wetland (i.e., water of the US) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line (i.e., spring high tide line) and are inundated by tidal waters two times per lunar month, during spring high tides.

Vegetated Buffer: A vegetated upland or wetland area next to rivers, streams, lakes, or other open waters which separates the open water from developed areas, including agricultural land. Vegetated buffers provide a variety of aquatic habitat functions and values (e.g., aquatic habitat for fish and other aquatic organisms, moderation of water temperature changes, and detritus for aquatic food webs) and help improve or maintain local water quality. A vegetated buffer can be established by maintaining an existing vegetated area or planting native trees, shrubs, and herbaceous plants on land next to open waters. Mowed lawns are not considered vegetated buffers because they provide little or no aquatic habitat functions and values. The establishment and maintenance of vegetated buffers is a method of compensatory mitigation that can be used in conjunction with the restoration, creation, enhancement, or preservation of aquatic habitats to ensure that activities authorized by NWP result in minimal adverse effects to the aquatic environment. (See General Condition 19.)

Vegetated Shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: A waterbody is any area that in a normal year has water flowing or standing above ground to the extent that evidence of an ordinary high water mark is established. Wetlands contiguous to the waterbody are considered part of the waterbody.

References

-“Issuance of Nationwide Permits,” Federal Register, Volume 67, Number 10, pages 2020-95. Dated January 15, 2002.